

CITY OF WILLIAMSBURG, VIRGINIA**GENERAL CONDITIONS OF PPEA COMPREHENSIVE AGREEMENT****TABLE OF CONTENTS**

<u>SECTION TITLE</u>	PAGE
1. DEFINITIONS	3
2. CONTRACT DOCUMENTS	6
3. LAWS AND REGULATIONS	6
4. NONDISCRIMINATION	7
5. PROHIBITION OF ALCOHOL AND OTHER DRUGS	8
6. TIME FOR COMPLETION	8
7. CONDITIONS AT SITE	9
8. CONTRACT SECURITY	10
9. SUBCONTRACTS	10
10. ENVIRONMENTAL STIPULATIONS	11
11. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE	12
12. "ALL-RISK" BUILDER'S RISK INSURANCE	12
13. PATENTS	12
14. INSPECTION	13
15. SUPERINTENDENCE BY PPEA Contractor	14
16. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES	15
17. SCHEDULE OF THE WORK	15
18. ACCESS TO WORK	18
19. SURVEYS AND LAYOUT	18
20. PLANS AND SPECIFICATIONS	18
21. SUBMITTALS	19
22. FEES, SERVICES AND FACILITIES	19
23. EQUALS	19
24. AVAILABILITY OF MATERIALS	20

25.	PPEA CONTRACTOR'S TITLE TO MATERIALS	20
26.	STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP	20
27.	WARRANTY OF MATERIALS AND WORKMANSHIP	21
28.	USE OF SITE AND REMOVAL OF DEBRIS	21
29.	SIGNS	22
30.	PROTECTION OF PERSONS AND PROPERTY	22
31.	CLIMATIC CONDITIONS	23
32.	PAYMENTS TO PPEA Contractor	23
33.	PAYMENTS BY PPEA Contractor (§2.2-4354, Code of Virginia)	27
34.	CHANGES IN THE WORK	28
35.	EXTRAS	32
36.	CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT	32
37.	OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE	33
38.	TERMINATION BY OWNER FOR CONVENIENCE	34
39.	DAMAGES FOR DELAYS; EXTENSION OF TIME	34
40.	INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL INSPECTION	36
41.	GUARANTEE OF WORK	37
42.	ASSIGNMENTS	38
43.	CONTRACTUAL DISPUTES (§2.2-4363, Code of Virginia)	38
44.	TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT	38
45.	PROJECT MEETINGS	39
46.	GENERAL INDEMNITY	40
47.	LIABILITY LIMITATION	41

1. DEFINITIONS

Whenever used in these General Conditions of the Comprehensive Agreement ("General Conditions") or in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

Beneficial Occupancy: The condition after Substantial Completion but prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date Owner accepts the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

Change Order: A document issued on or after the effective date of the Comprehensive Agreement Between Owner and PPEA Contractor which is agreed to by PPEA Contractor and approved by Owner, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include written orders to proceed issued pursuant to Section 34 (a) (3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

Code of Virginia: 1950 Code of Virginia as amended. Sections of the Code referred to herein are noted by (§ xx-xx).

Comprehensive Agreement: The Comprehensive Agreement Between Owner and PPEA Contractor, hereinafter referred to as the Contract.

Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

Contract Completion Date: The date by which the Work must be Substantially Complete. The Contract Completion Date is customarily established in the Notice To Proceed, based on the Time for Completion.

Contract Documents: The Comprehensive Agreement Between Owner and PPEA Contractor signed by Owner and PPEA Contractor and any documents expressly incorporated therein. Such incorporated documents customarily include the bid submitted by PPEA Contractor, these General Conditions, any Supplemental General Conditions, any Special Conditions, the plans and the specifications, and all modifications, including addenda and subsequent Change Orders.

Contract Price: The total compensation payable to PPEA Contractor for performing the Work, subject to modification by Change Order.

Day(s): Calendar day(s) unless otherwise noted.

Defective: An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion or Beneficial Occupancy).

Design Professional(s): The term used to designate the duly Virginia licensed persons or entities designated by the PPEA Contractor to perform and provide Engineering design and related services in connection with the Work.

Drawing: A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse and

longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

Emergency: Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

Final Completion Date: The date of Owner's acceptance of the Work from PPEA Contractor upon confirmation from PPEA Contractor that the Work is totally complete in accordance with Section 40(d).

Field Order: A written order issued by the PPEA's Design Professional which clarifies or explains the plans or specifications, or any portion or detail thereof, without changing the design, the Contract Price, the Time for Completion or the Contract Completion Date.

Float: The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project. Any difference in time between PPEA Contractor's approved early completion date and the Contract Completion Date shall be considered a part of the Project float.

Float, Free: The time (in days) by which an activity may be delayed or lengthened without impacting upon the start day of any activity following in the chain.

Float, Total: The difference (in days) between the maximum time available within which to perform an activity and the duration of an activity. It represents the time by which an activity may be delayed or lengthened without impacting the Time for Completion or the Contract Completion Date.

Notice: All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative or officer wherever they may be found; or (3) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox. Notice is effective upon such delivery. All notices to Owner pertaining to details of and scheduling of the Work should be directed to Owner's Representative.

If Owner and PPEA Contractor agree in writing that Notices transmitted by Facsimile (Fax) are acceptable for the Project, such Notice shall be transmitted to the Fax number listed in the agreement and shall have a designated space for the Fax Notice recipient to acknowledge his receipt by authorized signature and date. The Fax Notice with authorized signature acknowledging receipt shall be Faxed back to the sender. The Faxed Notice shall be effective on the date it is acknowledged by authorized signature. All Faxed Notices shall also be sent by hard copy, which shall be effective upon delivery, as provided herein. Notice shall be effective upon the date of acknowledgment of the Faxed Notice or the date of delivery, whichever occurs first.

Notice to Proceed: A written notice given by Owner to PPEA Contractor fixing the date on which the Contract time will commence for PPEA Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.

Owner: City of Williamsburg, Virginia.

Person: This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

Plans: The term used to describe the group or set of project-specific drawings prepared by or for PPEA Contractor and acceptable to Owner which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official and concerned regulatory agencies to determine compliance with applicable codes and regulations and for PPEA Contractor to perform the Work and which are included in the Contract Documents.

Project: The term used instead of the specific or proper assigned title of the entire undertaking which includes, but is not limited to, the "Work" described by the Contract Documents.

Project Inspector: One or more persons employed by Owner to inspect the Work for Owner and/or to document and maintain records of activities at the Site to the extent required by Owner. Owner shall notify PPEA Contractor in writing of the appointment of such Project Inspector(s).

Owner's Representative: Owner's Representative as used herein shall be Owner's designated overseer on the Project. Owner's Representative shall be the person through whom Owner generally conveys written decisions and notices. The scope of Owner's Representative's authority is limited to that authorized by Owner, who shall provide written information to PPEA Contractor at the Preconstruction meeting defining those limits. Upon receipt of such information, PPEA Contractor shall be on notice that it cannot rely on any decisions of Owner's Representative outside the scope of his authority. Nothing herein shall be construed to prevent Owner from issuing any notice directly to PPEA Contractor. Owner may change Owner's Representative from time to time and may, in the event that Owner's Representative is absent, disabled or otherwise temporarily unable to fulfill his duties, appoint an interim Owner's Representative.

PPEA Contractor: The person or entity with whom Owner has entered into a PPEA Comprehensive Agreement to do the Work.

Provide: Shall mean furnish and install ready for its intended use.

Site: Shall mean the location at which the Work is performed or is to be performed.

Specifications: That part of the Contract Documents prepared by PPEA Contractor's Design Professionals and acceptable to Owner which contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for Owner to determine code compliance and for PPEA Contractor to perform the Work.

Subcontractor: A person having a direct contract with PPEA Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any person who provides on-site labor but does not include any person who only furnishes or supplies materials for the Project.

Submittals: All shop, fabrication, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for PPEA Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by PPEA Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

Substantial Completion: The condition when Owner agrees that the Work is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by Owner for the purposes for which it was intended. Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Final Completion is achieved.

Supplemental General Conditions: That part of the Contract Documents which amends or

supplements the General Conditions.

Supplier: A manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

Time for Completion: The number of consecutive calendar days following the issuance of the Notice to Proceed which PPEA Contractor has to substantially complete all Work required by the Contract. When the Notice to Proceed is issued, it states a Contract Completion Date, which has been set by Owner based on the Time for Completion.

Work: The services performed under this Contract including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction. The Work also includes the entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

2. CONTRACT DOCUMENTS

- (a) The PPEA Performance Bond (PPEA -10); Standard Labor and Material Payment Bond (PPEA-10.1); PPEA Contract Change Order (PPEA-11); Application and Certification for Payment (PPEA-12); Affidavit of Payment of Claims (PPEA-13); PPEA Certificate of Substantial Completion by PPEA Contractor (PPEA-13.1); and Certificate of Final Completion by PPEA Contractor (PPEA-13.2) are forms incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein. They must be used by PPEA Contractor for their respective purposes.
- (b) All time limits stated in the Contract Documents, including but not limited to the Time for Completion of the Work, are of the essence of the Contract.
- (c) The Comprehensive Agreement Between Owner and PPEA Contractor shall be signed by Owner and PPEA Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.
- (d) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. In the event of conflicts among the Contract Documents, the Contract Documents shall take precedence in the following order: the Comprehensive Agreement Between Owner and PPEA Contractor; the Supplemental General Conditions; the General Conditions; the Special Conditions; the specifications with attachments; and the plans.
- (e) If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.
- (f) All correspondence, invoices, memoranda, submittals and other documents related to this Project whether generated by Owner, the PPEA Contractor or others should be identified at the beginning of the document with the Project Code Number PPEA 1900-11-01. Additional identification such as a job number, purchase order number or such may also be shown at the generator's option.

3. LAWS AND REGULATIONS

- (a) PPEA Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby. PPEA Contractor shall assure that all Subcontractors and tradesmen who

perform Work on the Project are properly licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, Articles 1 and 3 and by applicable regulations.

- (b) This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the "right to work."
- (c) "PPEA Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.
- (d) IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, PPEA Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- (e) PPEA Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements in Subsections (a), (b), and (c) of Section 33 of these General Conditions with respect to each lower-tier Subcontractor and Supplier.
- (f) If PPEA Contractor violates laws or regulations that govern the Project, PPEA Contractor shall indemnify and hold Owner harmless against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of PPEA Contractor, PPEA Contractor shall indemnify and hold Owner harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that result from such violation.

4. NONDISCRIMINATION

- (a) §2.2-4311 of the Code of Virginia shall be applicable. It provides as follows:

"1. During the performance of this Contract, PPEA Contractor agrees as follows:

- a. PPEA Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of PPEA Contractor. PPEA Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. PPEA Contractor, in all solicitations or advertisements for employees placed by or on behalf of PPEA Contractor, will state that such PPEA Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. PPEA Contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor."

- (b) Where applicable, the Virginians with Disabilities Act and the Federal Americans with Disabilities

Act shall apply to PPEA Contractor and all Subcontractors.

5. PROHIBITION OF ALCOHOL AND OTHER DRUGS

(a) §2.2-4312 of the Code of Virginia shall be applicable. It provides as follows:

“During the performance of this contract, PPEA Contractor agrees to (i) provide a drug-free workplace for PPEA Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in PPEA Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of PPEA Contractor that PPEA Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a PPEA Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.”

(b) PPEA Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all PPEA Contractor, Subcontractor and Supplier personnel at the Site:

- (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and
- (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

6. TIME FOR COMPLETION

- (a) The Time for Completion for the Project including any dates for completion of any designated Phase or Sub-phase shall be as stated in the Contract as agreed upon by Owner and PPEA Contractor, subject to Change Orders or written mutual agreement of Owner and PPEA Contractor. The Work must be substantially completed by the Time for Completion or the Contract Completion Date. Unless otherwise specified, PPEA Contractor shall achieve Final Completion within thirty (30) days after the date of Substantial Completion.
- (b) The Time for Completion shall be stated in the Contract and shall become a binding part of the Contract upon which Owner may rely in planning the use of the facilities to be constructed and for all other purposes. If PPEA Contractor fails to substantially complete the Work within the Time for Completion or Contract Completion Date, as set forth in the Contract, he shall be subject to payment of actual damages incurred by Owner or liquidated damages, if provided for in the Contract.
- (c) PPEA Contractor, in submitting his proposal, acknowledges that he has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic

Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the Work. No additional compensation will be paid to PPEA Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by Owner under the following conditions:

- (1) The request for additional time shall be further substantiated by weather data collected during the period of delay at the Site. Said data must demonstrate that an actual departure from normal weather occurred at the Site during the dates in question.
 - (2) The extension requested must be supported by a delay in completion of the entire Project shown on approved bar graph schedule required for the Project. Extensions will be granted only for delays in completion of the Project, not for that portion of any delay which consumes only "float" time.
 - (3) A request for extension of time based on abnormal weather must be made in writing within five (5) calendar days of the completion of the calendar month during which abnormal weather is claimed at the Site.
 - (4) All of the evidence and data supporting the request (including both historical data and the recordings at the Site during the time of delay) must be furnished to Owner before any consideration will be given to the request. That supporting data shall be submitted by the end of the calendar month following the month for which the request is made.
- (d) PPEA Contractor represents and agrees that he has taken into account in his PPEA Proposal of local conditions, availability of materials, equipment, and labor, and any other factors which may affect the performance of the Work. PPEA Contractor agrees and warrants that he will achieve Substantial Completion of the Work to allow Owner to have Beneficial Occupancy not later the Time of Completion of the Contract Completion Date. PPEA Contractor agrees that he will achieve Final Completion of the Work (the entire completion of all Work, including "punch list" items), not later than thirty (30) days after achieving Substantial Completion.

7. CONDITIONS AT SITE

- (a) PPEA Contractor has visited the Site prior to submitting his PPEA Proposal and is totally responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site, and the character and extent of existing improvements and work within or adjacent to the Site. Claims, which result from PPEA Contractor's failure to do so, will be deemed waived.
- (b) If, in the performance of the Contract, subsurface or latent conditions at the Site are found which are materially different from those frequently present in the locality or from those indicated in the Contract Documents, PPEA Contractor must report such conditions to Owner and to PPEA Contractor's Design Professional(s) before the conditions are disturbed. Upon such notice the Design Professional(s) shall promptly propose such changes in the Contract Documents as he finds necessary to conform to the different conditions. Any change in the cost of the Work or additional time needed for completion must be requested pursuant to Sections 34, 35 and/or 39 of these General Conditions.
- (c) If PPEA Contractor, during the course of the Work, observes the existence of any material which he knows, should know, or has reason to believe is hazardous to human health, PPEA Contractor shall promptly notify Owner. Owner will provide a third party contractor with instructions regarding the disposition of the material. PPEA Contractor shall not perform any Work involving the material or any Work causing the material to be less accessible prior to receipt of special instructions from Owner. PPEA Contractor will have no responsibility for the removal of such material. PPEA Contractor, however, will be entitled to an equitable adjustment to its cost and

schedule. Owner shall remove, transport and dispose of or otherwise accommodate any hazardous wastes and materials (other than hazardous wastes and materials created or used as part of PPEA Contractor's or any of its Subcontractor's construction activities at the Site) discovered or released at the Site or on off-site rights of way and easements. This shall include a release by PPEA Contractor or its Subcontractors of any hazardous waste or materials that have been or are brought to the foregoing areas by third parties other than the PPEA Contractor or its subcontractors.

- (d) All property boundary markers shown on the Drawings or discovered during the course of construction shall be protected. All property boundary markers disturbed due to construction activities shall be replaced by Contractor at no expense to Owner. Property boundary markers shall be restored by a surveyor licensed in the State of Virginia and all restored property boundary markers shall be shown on the Record Drawings.

8. CONTRACT SECURITY

- (a) PPEA Contractor shall deliver to Owner or its designated representative, a Performance Bond and a Labor and Material Bond, each fully executed by PPEA Contractor and one or more surety companies legally licensed to do business in Virginia and each in an amount equal to one hundred percent (100%) of the total Contract Sum. If more than one Surety executes a bond, each shall be jointly and severally liable to Owner for the entire amount of the bond. Sureties shall be selected by PPEA Contractor, subject to approval by Owner. No payment on the Contract shall be due and payable to PPEA Contractor until the bonds have been approved by Owner and the Williamsburg City Attorney.

For the purposes of all Standard Labor and Material Payment Bonds entered into, the term "Subcontractors" as used in §2.2-4337.A.2 of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by PPEA Contractor (referred to in §2.2-4337. A.2. of the Code of Virginia as the "prime contractor"), whether such contractor had a direct contract with PPEA Contractor (prime contractor) or whether there were one or more other intervening Subcontractors contractually positioned between it and PPEA Contractor (prime contractor).

- (b) See §2.2-4338 of the Code of Virginia, for alternative forms of security for payment and/or performance bonds.

9. SUBCONTRACTS

- (a) PPEA Contractor shall, as soon as practicable after the signing of the Contract, notify Owner in writing of the names of all Subcontractors proposed for the principal parts of the Work and of such others as Owner may direct. Where the specifications establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, PPEA Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. PPEA Contractor shall not employ any Subcontractor that Owner may by written notice to PPEA Contractor, within a reasonable time, object to as unsuitable. Owner shall not direct PPEA Contractor to contract with any particular Subcontractor unless provided in the specifications.
- (b) Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to PPEA Contractor, the Schedule of Values and Requests for Payment submitted by PPEA Contractor and any other documentation submitted by PPEA Contractor which would tend to show what amounts are due and payable by PPEA Contractor to the Subcontractors.

- (c) PPE Contractor shall be fully responsible to Owner for all acts and omissions of his agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.
- (d) PPEA Contractor shall be fully responsible for his invitees at the Site and for those of his Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.
- (e) PPEA Contractor agrees that he alone is responsible for all dealings with his Subcontractors and Suppliers, and their Subcontractors, employees and invitees, including, but not limited to, the Subcontractors' or Suppliers' claims, demands, actions, disputes and similar matters unless specifically provided otherwise by the Contract or by statute.

10. ENVIRONMENTAL STIPULATIONS

- (a) Any cost associated with violations of the law including, but not limited to, remediations, clean up cost, fines, administrative or civil penalties or charges, and third party claims imposed on Owner by any regulatory agency or by any third party as a result of PPEA Contractor's noncompliance with federal, state, or local environmental laws and regulations or nuisance statutes by PPEA Contractor or by Subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities retained by PPEA Contractor for this Contract, shall be paid by PPEA Contractor.

No separate payment will be made for the Work or precautions described herein except where provided for as a specific item in the Agreement or except where provision has been made for such payment in these specifications.

- (b) Pollution:

(1) Water

PPEA Contractor shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of rivers, streams, and impoundments. Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into channels leading to them.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. During specified spawning seasons, discharges and construction activities in spawning areas of state waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible materials and shall be removed by Contractor to natural ground when Owner so directs.

If PPEA Contractor dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional state and federal agencies and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

PPEA Contractor shall comply with all provisions of the latest edition of the Virginia Erosion and Sedimentation Control Handbook.

11. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

- (a) PPEA Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by Owner; nor shall PPEA Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the Subcontractor and approved by PPEA Contractor. Approval of insurance by Owner shall not relieve or decrease the liability of PPEA Contractor hereunder.
- (b) Required insurance coverages and amounts of coverage shall be as specified Supplemental General Conditions (Form PPEA – 2B).

12. "ALL RISK" BUILDER'S RISK INSURANCE

- (a) PPEA Contractor, at his cost, shall obtain and maintain in the names of Owner and PPEA Contractor "all-risk" builder's risk insurance upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof. Such insurance may include a deductible provision if Owner so provides in the Supplemental General Conditions, in which case PPEA Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to Owner, in accordance with its interests, as they may appear. Owner, its officers, employees and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with Owner no later than thirty (30) days following the date with both parties have signed the Contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to Owner. A copy of the policy of insurance shall be given to Owner upon demand. The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and Sitework.
- (b) PPEA Contractor is responsible for providing any desired coverage for PPEA Contractor's or Subcontractors' buildings, equipment, materials, tools or supplies that are on-site.

13. PATENTS

PPEA Contractor shall be responsible to Owner to obtain and assure that PPEA Contractor's Subcontractors have obtained all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees for such invention, article, appliance, process, or technique that is utilized in the Work. PPEA Contractor shall hold Owner, its officers, agents and employees, harmless against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used by or on behalf of PPEA Contractor or its Subcontractors in the performance of the Contract, including its use by Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or plans as acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the specifications or plans as acceptable for use in carrying out the Work, PPEA Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise Owner. Owner may direct that some other invention, process, technique, article or appliance be used. Should PPEA Contractor have reason to believe that the invention, process, technique, article or appliance so specified is an

infringement of a patent, and fail to inform Owner, he shall be responsible for any loss or liability due to the infringement.

14. INSPECTION

- (a) All material and workmanship shall be subject to inspection, examination and testing by Owner, Owner's Representative, Owner's Project Inspector, authorized inspectors and authorized independent testing entities at any and all times during manufacture and/or construction. Owner shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and PPEA Contractor shall promptly segregate and remove the rejected material from the Site. If PPEA Contractor fails to proceed within a reasonable time under the circumstances with replacement of rejected material and/or the correction of defective workmanship, Owner may by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to PPEA Contractor, or may terminate the right of PPEA Contractor to proceed as provided in Section 37 of these General Conditions, PPEA Contractor and surety being liable for any damage to the same extent as provided in Section 37 for termination thereunder.
- (b) Site inspections, tests conducted on Site or tests of materials gathered on Site, which the Contract and/or applicable codes and regulations and guidelines require to be performed by independent testing entities, shall be contracted and paid for by PPEA Contractor. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. PPEA Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (d) below, whenever such examination and testing finds defective materials, equipment or workmanship, PPEA Contractor shall reimburse Owner for the cost of reexamination and retesting. Although conducted by independent testing entities, Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If fees are charged for such tests and certifications, they shall be paid by PPEA Contractor. PPEA Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or to pay, together with any inspections and tests which he chooses to perform for his own purposes, but are not required by the Contract.
- (c) Where Work is related to or dependent on the Defective Work, PPEA Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to Owner. Where Work is rejected because of defective material or workmanship, PPEA Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and Owner has approved corrective measures.
- (d) Should it be considered necessary or advisable by Owner at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, PPEA Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of PPEA Contractor or his Subcontractors, PPEA Contractor shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of PPEA Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and PPEA Contractor's cost of material and labor necessary for replacement including a markup of fifteen (15%) percent for overhead and profit shall be paid to PPEA Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be

granted a suitable extension of time. Notwithstanding the foregoing, PPEA Contractor shall be responsible for all costs and expenses in removing and replacing the Work if PPEA Contractor had covered the Work prior to any inspection or test contrary to the written instructions timely provided in advance by Owner, Owner's Representative or Project Inspector.

- (e) The Project Inspector has the authority to recommend to Owner that the Work be suspended when in his judgment the Contract Documents are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of Owner. The cost of any such Work stoppage shall be borne by PPEA Contractor unless it is later determined that no fault existed in PPEA Contractor's Work.
- (f) If Owner appoints a Project Inspector, such Inspector shall have the right and the authority to:
 - (1) Inspect all construction materials, equipment, and supplies for quality and for compliance with the Contract Documents and/or approved shop drawings and Submittals.
 - (2) Inspect workmanship for compliance with the standards described in the Contract Documents.
 - (3) Observe and report on all tests and inspections performed by PPEA Contractor.
 - (4) Recommend rejection of Work which does not conform to requirements of the Contract Documents.
 - (5) Keep a record of construction activities, tests, inspections, and reports.
 - (6) Attend all joint Site construction meetings and inspections held by Owner with PPEA Contractor.
 - (7) Check materials and equipment, together with documentation related thereto, delivered for conformance with approved Submittals and the Contract.
 - (8) Check installations for proper workmanship and conformance with shop drawing and installation instructions.
 - (9) Do all things for or on behalf of Owner as Owner may subsequently direct in writing.
- (g) The Project Inspector has no authority to:
 - (1) Authorize deviations from the Contract Documents;
 - (2) Enter into the area of responsibility of PPEA Contractor's superintendent;
 - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work; or
 - (4) Issue a certificate for payment.
- (h) The duties of the Project Inspector, if any, are for the benefit of Owner only and not for PPEA Contractor.

15. SUPERINTENDENCE BY PPEA CONTRACTOR

- (a) PPEA Contractor shall have a competent foreman or superintendent, satisfactory to

Owner, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with PPEA Contractor's workers. PPEA Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. PPEA Contractor shall notify Owner in writing of any proposed change in superintendent, including the reason therefore, prior to making such change.

- (b) PPEA Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by PPEA Contractor, the Subcontractors, Owner or Owner's separate PPEA Contractors and their Subcontractors.
- (c) Owner may, in writing, require PPEA Contractor to remove from the Site any employee or Subcontractor's employee Owner deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but Owner shall have no obligation to do so.

16. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES

- (a) PPEA Contractor shall be solely responsible for supervising and directing the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. PPEA Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. PPEA Contractor, in performing as PPEA Contractor, shall also be responsible to Owner for the design or selection of any specific means, method, technique, sequence, or procedure of construction that is indicated in and required by the Contract Documents. PPEA Contractor is solely responsible to Owner that the finished Work complies with the Contract Documents.

PPEA Contractor shall be fully responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Design Professional, the Project Inspector, Owner, Owner's Representative, Owner's employees and agents, or any other entity whatever shall relieve PPEA Contractor from its responsibility for compliance with the requirements of the Contract or its responsibility for health and safety programs and precautions.

- (b) PPEA Contractor shall be fully responsible to Owner for all acts and omissions of all succeeding tiers of Design Professional(s), Subcontractors, and Suppliers performing or furnishing any of the Work just as PPEA Contractor is responsible for PPEA Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between Owner and any Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner to pay for or see to payment of any moneys due any such Subcontractor, Supplier, or other person or organization except as may otherwise be required by law.

17. SCHEDULE OF THE WORK

- (a) **General:** PPEA Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. PPEA Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date established by the Contract and receive payment in accordance with Section 32 for the

Work completed each period. However, the date established by the Contract Documents as the deadline for achieving Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The time (in days) between PPEA Contractor's planned early completion and the contracted Time for Completion is part of the Project "Total Float" time and will be used as such. Extensions of time pursuant to Sections 34, 35, and 39, damages for delay, and all other matters between Owner and PPEA Contractor will be determined using the contractually required Substantial Completion date, not an early Substantial Completion date planned by PPEA Contractor.

Within two (2) weeks after PPEA Contractor signs the Contract between Owner and PPEA Contractor, unless otherwise extended by Owner at the time of the signing, PPEA Contractor shall prepare and submit to Owner, a preliminary bar graph schedule for accomplishing the Work based upon the Time for Completion stated in the Contract. The preliminary bar graph schedule shall be in sufficient detail to show the sequencing of the various trades for each phase of the Work. Owner will notify PPEA Contractor of its acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by Owner. A fully complete Project schedule for accomplishing the Work must be submitted in like manner no later than sixty (60) days after the Contract is signed by Owner.

Owner's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, etc. shall not constitute a representation or warranty by Owner, including but not limited to a representation or warranty that the schedule is feasible or practical nor shall any such acceptance or failure to reject relieve PPEA Contractor from sole responsibility for completing the Work within the time allowed.

No progress payments will be payable to PPEA Contractor until after he has submitted a preliminary schedule which is acceptable to Owner. Neither the second progress payment nor any subsequent payment shall be payable to PPEA Contractor until he has submitted a fully complete Project schedule accepted by Owner. Nor shall subsequent progress payments be payable to PPEA Contractor unless and until he maintains the monthly bar graphs or status reports required by Section 17(c) herein or unless and until he provides any recovery schedule pursuant to Section 17(d) herein.

Failure to provide a satisfactory preliminary or fully complete Project bar graph schedule within the time limits stated above shall be a breach of contract for which Owner may terminate the Contract in the manner provided in Section 37 of these General Conditions.

- (b) **Bar Graph Schedule:** The bar graph schedule shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the Work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by PPEA Contractor.

PPEA Contractor shall allow sufficient time in its schedule for the conduct whatever associated reviews or inspections may be required by Owner. Each Work activity will be assigned a time estimate by PPEA Contractor. One day shall be the smallest time unit used.

PPEA Contractor shall be responsible to submit to Owner a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

- (c) **Monthly Project Reports:** PPEA Contractor shall review progress not less than each month, but as often as necessary to properly manage the Project and stay on schedule. PPEA Contractor shall collect and preserve information on Change Orders, including extensions of time. PPEA

Contractor shall evaluate this information and update the latest accepted schedule as often as necessary to finish within the Contract Time for Completion or before the Contract Completion Date. PPEA Contractor shall submit to Owner along with each request for payment a copy of the bar graph schedule annotated to show the current progress. The bar graph schedule or monthly status report submitted with each periodic request for payment shall show the Work completed to date in comparison with the Work scheduled for completion, including but not limited to the dates for the beginning and completion of the placing of orders; the manufacture, testing and installation of materials, supplies and equipment. The form shall be approved by Owner; however, a bar graph marked, colored or annotated to reflect the above will usually satisfy this requirement. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, PPEA Contractor must indicate in writing in the report what measures he is taking and plans to take to bring each such element back on schedule and to ensure that the Time for Completion or Contract Completion Date is not exceeded.

- (d) **Progress Delay:** Should any of the following conditions exist, Owner may require PPEA Contractor to prepare, at no extra cost to Owner, a plan of action and a recovery schedule for completing the Work by the Contract Time for Completion or the Contract Completion Date:

- (1) PPEA Contractor's monthly progress report indicates delays that are, in the opinion of Owner, of sufficient magnitude that PPEA Contractor's ability to complete the Work

by the scheduled Time for Completion or the Contract Completion Date is brought into question;

- (2) PPEA Contractor desires to make changes in the logic (sequencing of Work) which, in the opinion of Owner, are of a major nature.

The plan of action and recovery schedule, when required, shall explain and display how PPEA Contractor intends to regain compliance with the current accepted, fully completed, Project Schedule, as updated by approved change orders.

The plan of action, when required, shall be submitted to Owner for review within two (2) business days of PPEA Contractor receiving Owner's written demand. The recovery schedule, when required, shall be submitted to Owner within five (5) calendar days of PPEA Contractor's receiving Owner's written demand.

- (e) **Early Completion of Project:** PPEA Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date. However, such planned early completion shall be for PPEA Contractor's convenience only and shall not create any additional rights of PPEA Contractor or obligations of Owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. PPEA Contractor shall not be required to pay damages to Owner because of its failure to achieve Substantial Completion by its planned earlier date. Likewise, Owner shall not pay PPEA Contractor any additional compensation for achieving Substantial Completion early nor will Owner owe PPEA Contractor any compensation should Owner, its officers, employees, or agents cause PPEA Contractor not to achieve Substantial Completion earlier than the date required by the Contract Documents.

If PPEA Contractor seeks to change the Time for Completion or the Contract Completion Date to reflect an earlier completion date, he may request or propose such a change. Owner may, but is not required to, accept such proposal. However, a change in the Time for Completion or the Contract Completion Date shall be accomplished only by Change Order. If PPEA Contractor's proposal to change the Time for Completion or the Contract Completion Date is accepted, a Change Order will be issued stating that all references in the Contract, including these General Conditions, to the Time for Completion or the Contract Completion Date shall thereafter refer to the date as modified, and all rights and obligations, including PPEA

Contractor's liability for actual damages, delay damages and/or liquidated damages, shall be determined in relation to the date, as modified.

18. ACCESS TO WORK

The Owner, Owner's Representative, the Project Manager, Owner's inspectors and other testing personnel, inspectors from the Department of Labor and Industry, and others authorized by Owner, shall have access to the Work at all times. PPEA Contractor shall provide proper facilities for access and inspection.

19. SURVEYS AND LAYOUT

- (a) The Owner shall furnish PPEA Contractor all necessary documents showing property lines and the location of existing buildings and improvements. PPEA Contractor shall provide competent surveying and engineering services to execute the Work in accordance with the Contract and shall be responsible for the accuracy of these surveying and engineering services.
- (b) Such general reference points and benchmarks on the Site as will enable PPEA Contractor to proceed with the Work will be established in the plans and specifications. If PPEA Contractor finds that any previously established reference points have been lost or destroyed, he shall promptly notify Owner.
- (c) PPEA Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without written notice to and the written approval from Owner. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior written approval of Owner, be replaced and accurately located by PPEA Contractor.

20. PLANS AND SPECIFICATIONS

- (a) The general character and scope of the Work are illustrated by the plans and the specifications prepared by PPEA Contractor or his Design Professional(s). The level of detail shown on the plans and stipulated in the specifications shall be sufficient to clearly demonstrate to the Building Official and pertinent permitting agencies that the design conforms to the requirements of the VUSBC, CPSM and AWWA. PPEA Contractor shall carry out the Work in accordance with the plans and specification and any additional detail drawings and instructions approved by Owner.

Measurements or dimensions shown on the drawings for Site features, utilities and structures shall be verified at the Site by PPEA Contractor. PPEA Contractor shall not scale measurements or dimensions from the drawings. If there are discrepancies, Owner shall be consulted.

- (b) **As-Built Drawings:** As-Built Drawings: PPEA Contractor shall maintain at the Site for Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to Owner, Owner's Representative, the Project Inspector, Owner's other inspectors and to Owner's testing personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.
- (c) **Record Drawings:** Upon completion of the Work and prior to the final inspection, PPEA Contractor shall deliver to Owner one complete set of "As-Built Drawings" in reproducible form.

21. SUBMITTALS

- (a) Shop drawings, setting drawings, product data, and samples generated by PPEA Contractor shall be known as submittals. Three copies of all submittals shall be provided to Owner when generated.
- (b) Submittals shall be approved by PPEA Contractor and his Design Professional for conformance with the required codes, standards, and provisions of the Contract. Three copies of all approved submittals shall be provided to Owner. One copy of the "Approved" shop drawings/submittals shall be on file in the construction trailer for use by Inspectors.
- (c) Any submittal material, assembly, or product which deviates from the approved Permit Documents shall be submitted to the Building Official for VUSBC and CPSM approval prior to installation.
- (d) The Work shall be in accordance with approved Permit Documents as detailed by the approved submittals.

22. FEES, SERVICES AND FACILITIES

Contractor shall obtain all permits on a cost reimbursable basis. Owner in accordance with the PPEA Contractor's Proposal shall reimburse PPEA Contractor for any all fees and charges incurred by the PPEA Contractor, and, to the extent necessary provide an equitable adjustment to schedule for delay in obtaining temporary access and public right-of-way blockage or use, for temporary connections to utilities and for the use of property (other than the Site) for storage of materials and other purposes unless otherwise specifically stated in the Contract Documents.

- (a) PPEA Contractor shall be responsible for providing required connections, temporary wiring, piping, etc. to these services in a safe manner and in accordance with applicable codes. All temporary wire, pipe, etc. shall be removed before the Substantial Completion inspection. Acceptance by PPEA Contractor of the use of Owner's water and electricity constitutes a release to Owner of all claims and of all liability to PPEA Contractor for whatever damages which may result from power and water outages or voltage variations.
- (c) Owner shall pay any connection charges for permanent utility connections directly to the utility Supplier. PPEA Contractor shall coordinate such connections with the utility Supplier.
- (d) Except as otherwise specifically stated in the Contract Documents, PPEA Contractor, either directly or through his Subcontractors, shall provide and pay for all material, labor, tools, equipment, water, light, power, telephone and other services or facilities of every nature whatsoever necessary to execute completely and deliver the Work within the Contract Time for Completion or before the Contract Completion Date.
- (e) PPEA Contractor shall provide temporary facilities including PPEA Contractor's office space, toilet facilities, and storage space, as required for the operations and the protection of the material and Work. Number, sizes and locations shall be subject to approval of Owner. Sanitary facilities shall be an approved type of chemical toilet and shall be regularly serviced.

23. EQUALS

- (a) **Brand names:** Unless otherwise stated in the specifications, the name of a certain brand, make or manufacturer denotes the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of the article desired, but does not restrict PPEA Contractor to the specific brand, make, or manufacturer; it is set forth to convey to PPEA Contractor the general style, type, character and quality of the article specified.

- (b) **Equal materials, equipment or assemblies:** Whenever in these Contract Documents, a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded merely as a standard. Any other brand, make or manufacturer of a product, assembly or equipment which in the opinion of Owner is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by Owner as not being equal.
- (b) **Substitute materials, equipment or assemblies:** PPEA Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the approved plans and specifications but which PPEA Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. If the proposed substitute is acceptable to Owner, a Change Order will be proposed to PPEA Contractor to accept the substitute and to deduct the proposed cost savings from the Contract Price. Owner shall have the right to limit or reject substitutions at its sole discretion.
- (c) PPEA Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at PPEA Contractor's expense.

24. AVAILABILITY OF MATERIALS

If a brand name, product, or model number included in the Contract Documents is not available on the present market, alternate equal products or model numbers may be proposed by PPEA Contractor for approval by Owner.

25. PPEA CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by PPEA Contractor, or by any Subcontractor or Supplier, subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. PPEA Contractor warrants that he has clear and good title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

26. STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP

- (a) Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition.
- (b) Unless specifically approved by Owner or required by the Contract, PPEA Contractor shall not incorporate into the Work any materials containing asbestos or any material known by the industry to be hazardous to the health of building construction workers, maintenance workers, or occupants. If PPEA Contractor becomes aware that a material required by the Contract contains asbestos or other hazardous materials, he shall notify Owner immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.
- (c) All workmanship shall be of the generally accepted quality standards found in the building industry in every respect. Work shall be in accordance with the contract documents, shall not be defective. All items of Work shall be done by craftsmen or tradesmen skilled in the particular task or activity to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workmen. Poor or inferior workmanship (as determined by the Design Professional, Owner or other inspecting authorities) shall be removed and replaced at PPEA Contractor's expense such that the Work conforms to the generally accepted quality standards of the trades concerned, or otherwise corrected to the

satisfaction of Owner, or other inspecting authority, as applicable.

- (d) Where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions.
- (e) Where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. PPEA Contractors and all subcontractors are expected to be proficient and skilled in their respective trades and knowledgeable of the Codes and Standards of the National Fire Protection Association (NFPA), National Electric Code (NEC), Occupational Safety and Health Act (OSHA) and other codes and standards applicable to installations and associated work by his trade.
- (f) During and/or at the completion of installation of any items, the tests designated in the plans or specifications necessary to assure proper and satisfactory functioning for its intended purpose shall be performed by PPEA Contractor or by its Subcontractor responsible for the completed installation. All costs for such testing are to be included in the Contract Price. If required by the Contract Documents, PPEA Contractor shall furnish prior to final inspection the manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested.

27. WARRANTY OF MATERIALS AND WORKMANSHIP

- (a) PPEA Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. PPEA Contractor further warrants that all workmanship shall be of good quality generally acceptable in the trade, and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.
- (b) Work not conforming to these warranties shall be considered defective.
- (c) This warranty of materials and workmanship is separate and independent from and in addition to any of PPEA Contractor's other guarantees or obligations in the Contract or under Virginia law.

28. USE OF SITE AND REMOVAL OF DEBRIS

- (a) PPEA Contractor shall:
 - (1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site;
 - (2) Store his apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of his Work; and
 - (3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.
- (b) PPEA Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of the Work required to make the same conform to the plans

and specifications. PPEA Contractor shall not damage or endanger any portion of the Work or Site, including existing improvements, unless called for by the Contract.

- (c) PPEA Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the Site, public streets and sidewalks adjacent thereto shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the Project Site, but shall be removed from the Site and properly disposed of in a licensed landfill or otherwise as required by law.
- (d) PPEA Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment or such prior time as Owner may require, to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements. If PPEA Contractor fails to clean up at the time required herein, Owner may do so and charge the costs incurred thereby to PPEA Contractor.
- (e) PPEA Contractor shall have, On-Site, an employee certified by the Department of Conservation and Recreation as a Responsible Land Disturber who shall be responsible for the installation, inspection and maintenance of erosion control and stormwater management measures and devices. PPEA Contractor shall prevent Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of debris off the Site in accordance with the applicable requirements and standards of the Contract and the Virginia Department of Conservation and Recreation's Erosion and Sediment Control Regulations and the Virginia Stormwater Management Regulations.

29. SIGNS

PPEA Contractor may, at his option and without cost to Owner, erect signs acceptable to Owner on the Site for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of Owner as to design and location.

30. PROTECTION OF PERSONS AND PROPERTY

- (a) PPEA Contractor expressly undertakes, both directly and through his Subcontractors, to take every reasonable precaution at all times for the protection of all persons and property which may come on the Site or be affected by PPEA Contractor's Work.
- (b) PPEA Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Any violation of these requirements or duties or any potential safety hazard that is brought to the attention of PPEA Contractor by Owner, or any other persons shall be immediately abated.
- (c) The provisions of all rules and regulations governing health and safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia, shall apply to all Work under this Contract.
- (d) PPEA Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except as may be due to errors in the Contract Documents or caused by agents or employees of Owner. PPEA Contractor shall adequately

protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. PPEA Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities for protection as required by public authority, local conditions, or the Contract.

- (e) In an emergency affecting the health, safety or life of persons or of the Work, or of the adjoining property, PPEA Contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by PPEA Contractor on account of any emergency work shall be determined as provided by
- (f) When necessary for the proper protection of the Work, temporary heating of a type compatible with the Work must be provided by PPEA Contractor, at PPEA Contractor's expense, unless otherwise specified.

31. CLIMATIC CONDITIONS

PPEA Contractor shall suspend activity on and protect any portion of the Work that may be subject to damage by climatic conditions.

32. PAYMENTS TO PPEA CONTRACTOR

- (a) At least ten (10) days before each partial progress payment (but not more often than once a month), PPEA Contractor shall submit to Owner an Application for Payment filled out and signed by PPEA Contractor for the Work completed during the period covered by the partial progress payment estimate and supported by such data as is required by the Contract Documents.
- (b) Unless otherwise provided in the Contract, Owner will make partial payments to PPEA Contractor on the basis of a duly certified and approved Schedule of Values and Certificate for Payment ("Application for Payment") showing the estimate of the Work performed during the preceding calendar month or work period, as recommended by Owner's Representative. When evaluating PPEA Contractor's Application for Payment, Owner's Representative will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work with regard to the Time for Completion, and the estimated value of the Work necessary to achieve Final Completion. Owner's Representative will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. PPEA Contractor will submit his monthly Application for Payment so that it is received by Owner's Representative at least one work day prior to the date scheduled for the monthly pay meeting. Owner's Representative will review the Application for Payment with PPEA Contractor at the monthly pay meeting, which shall be considered the receipt date, and may approve any or all of the estimate of Work for payment. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested: If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall be accompanied by a bill of sale, invoice or other instrument documenting that the materials and equipment are free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance, all of which will be satisfactory to the Owner. The Owner, at its sole discretion, may not pay for stored materials without prejudice and without cause.
- (c) Review of Applications for Progress Payments

- (1) Owner shall, within ten (10) days after receipt of each Application for Payment, make such investigations as deemed necessary to verify the accuracy of the Application for Payment and either accept the application as accurate and suitable for payment or return the Application to PPEA Contractor indicating in writing Owner's reasons for refusing payment. If payment is refused, PPEA Contractor shall make the necessary corrections and resubmit the Application and Owner shall have an additional ten (10) days after receipt of the corrected Application for Payment from PPEA Contractor to determine whether this Application is accurate and suitable for payment.
- (2) Owner shall, within 30 Days after acceptance of the Application for Payment, make payment to PPEA Contractor. Owner may refuse to make payment of the full amount because claims have been made against Owner on account of PPEA Contractor's performance or furnishing of the Work, or because Liens have been filed in connection with the Work, or because there are other claims entitling Owner to a set-off against the payment. Owner shall give PPEA Contractor immediate written Notice stating the reasons for its failure to make payment.
- (3) Owner may also refuse to make payment of the full amount because there are other items entitling the Owner to retain set-offs from the amount recommended, including but not limited to:
 - a. Owner's compensation to the engineers or other professionals for actual costs for extra personnel hours for labor plus expenses because of the following Contractor caused events:
 - (i) Witnessing re-testing of corrected or replaced defective work.
 - (ii) Return visits to manufacturing facilities to witness factory testing or re-testing.
 - (iii) Evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby.
 - (iv) Overtime worked by PPEA Contractor necessitating Owner's Representative and/or consultants (and support staff, if any), to work overtime.
 - (v) Liability for liquidated damages incurred by the Contractor as set forth in the Contract.
 - (vi) Loss to Owner caused by PPEA Contractor acts or omissions including, but not limited to:
 - Defective Work not remedied;
 - Claims filed or reasonable evidence indicating probable filing of claims against PPEA Contractor;
 - Failure of PPEA Contractor to make payments properly to subcontractors or for materials or labor;
 - A reasonable doubt that the Project can be completed for the balance then unpaid;
 - Failure to maintain (each month) the record set of Drawings and Specifications. Failure to provide Owner with record Drawings and Specifications within thirty (30) calendar Days from the date of the Substantial Completion;

- Failure to periodically remove and dispose of accumulated debris, rubbish, and discarded/damaged materials;
- Persistent failure to carry out the Work in accordance with the Contract Documents;
- A reasonable doubt that the Work will be completed within the Contract Time.
- Failure of PPEA Contractor to submit an updated progress schedule or other required supporting documentation (if requested by Owner) to Owner with the monthly application for progress payment.

(d) Retained Funds.

- (1) Owner shall retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the Contract by PPEA Contractor. Owner will release all retainage upon Final Payment.
- (2) Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the Owner. When the Final Payment is paid, the Owner shall direct to the Contractor monies due as determined by the Owner. The Owner reserves the right to recall retained funds and to release retained funds to the surety upon receipt of written request from the Contractor or in the event of default.

(e) Conditions of Payment to Contractor

- (1) All material and Work covered by partial progress payments shall thereupon become the sole property of Owner, but this provision shall not be construed as relieving PPEA Contractor from the sole responsibility for the safety and protection of all materials and Work upon which payments have been made or the restoration or replacement of any damaged or stolen Work or property or as a waiver of the right of Owner to require the fulfillment of all the terms of the Contract.
- (2) Prior to Substantial Completion, Owner, with the concurrence of PPEA Contractor, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.
- (3) Owner shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving PPEA Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the Owner.
- (4) PPEA Contractor shall indemnify and save Owner and Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools and all supplies, incurred in the furtherance of the performance of the Work. PPEA Contractor shall, at Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If PPEA Contractor fails to do so Owner may, after having notified PPEA Contractor, either pay unpaid bills or withhold from PPEA Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to PPEA Contractor shall be resumed, in accordance with the terms of the Contract Documents but in no event shall the provisions of this Section be construed to impose any obligations

upon Owner to either PPEA Contractor, the Surety, or any third party. In paying any unpaid bills of PPEA Contractor, any payment so made by Owner shall be considered as a payment made under the Contract Documents by Owner to PPEA Contractor and Owner shall not be liable to PPEA Contractor for any such payments made in good faith.

- (f) Unless otherwise provided in the Contract, Owner will make partial payments to PPEA Contractor on the basis of a duly certified and approved Schedule of Values and Certificate for Payment ("Application for Payment") showing the estimate of the Work performed during the preceding calendar month or work period, as recommended by Owner's Representative. When evaluating PPEA Contractor's Application for Payment, Owner's Representative will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work with regard to the Time for Completion, and the estimated value of the Work necessary to achieve Final Completion. Owner's Representative will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. PPEA Contractor will submit his monthly Application for Payment so that it is received by Owner's Representative at least one work day prior to the date scheduled for the monthly pay meeting. Owner's Representative will review the Application for Payment with PPEA Contractor at the monthly pay meeting, which shall be considered the receipt date, and may approve any or all of the estimate of Work for payment. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested.
- (g) The final payment, which shall include the retainage, less any amounts due to or claimed by Owner, shall not become due until Owner agrees that Final Completion has been achieved and until PPEA Contractor shall deliver to Owner a Certificate of Completion by PPEA Contractor and an Affidavit of Payment of Claims stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with the Project less retainage. Amounts due Owner which may be withheld from the final payment may include, but are not limited to amounts due as provided in subsection (c) (3) above. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, PPEA Contractor shall list each to which an agreed amount of money is due or which has a claim in dispute. With respect to all such Subcontractors and Suppliers, PPEA Contractor shall provide to Owner, along with the Affidavit of Payment of Claims an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to them by PPEA Contractor and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier pursuant to Section 33(b) below, and whether satisfactory arrangements have been made for the payment of said amounts. If no agreement can be reached between PPEA Contractor and one or more Subcontractors or
- Suppliers as to the amounts owed to the Subcontractors or Suppliers, Owner may, in its discretion, pay such portion of the moneys due to PPEA Contractor which is claimed by the Subcontractor or Supplier into a Virginia Court or Federal Court sitting in Virginia, in the manner provided by law. Said payment into court shall be deemed a payment to PPEA Contractor. Nothing in this Section shall be construed as creating any obligation or contractual relationship between Owner and any Subcontractor or Supplier, and Owner shall not be liable to any Subcontractor or Supplier on account of any failure or delay of Owner in complying with the terms hereof.
- (h) Interest shall accrue on all amounts owed by Owner to PPEA Contractor that remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the rate of twelve percent (12%) per annum. No interest shall accrue on retainage or when payment is delayed because of disagreement between Owner and PPEA Contractor regarding the quantity, quality, or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy

of any Request for Payment received. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a delayed payment that is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. These same provisions relating to payment of interest to PPEA Contractor shall apply also to the computation and accrual of interest on any amounts due from PPEA Contractor to Owner for deductive change orders and to amounts due on any claims by Owner. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

- (i) PPEA Contractor's acceptance of the final payment shall be and operate as a release to Owner of all claims by PPEA Contractor, its Subcontractors and Suppliers, and of all liability to PPEA Contractor whatever, including liability for all things done or furnished in connection with the Work, except for things done or furnished which are the subject of unresolved claims for which PPEA Contractor has filed a timely written notice of intent, provided a claim is submitted no later than sixty (60) days after final payment. Acceptance of any interest payment by PPEA Contractor shall be a release of Owner from claims by PPEA Contractor for late payment.

33. PAYMENTS BY PPEA CONTRACTOR (§2.2-4354, Code of Virginia)

Under §2.2-4354, Code of Virginia, PPEA Contractor is obligated to:

- (a) Within seven (7) days after receipt of amounts paid to PPEA Contractor by Owner for Work performed by the Subcontractor or Supplier under this Contract,
 - (1) Pay the Subcontractor or Supplier for the proportionate share of the total payment received from Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under this Contract; or
 - (2) Notify the Subcontractor or Supplier, in writing, of his intention to withhold all or a part of the Subcontractor or Supplier's payment with the reason for nonpayment;
- (b) Pay interest to the Subcontractor or Supplier on all amounts owed by PPEA Contractor that remain unpaid after seven (7) days following receipt by PPEA Contractor of payment from Owner for Work performed by the Subcontractor or materials furnished by the Supplier under this contract, except for amounts withheld as allowed under subsection (a) (2) of this Section.
- (c) Include in each of his subcontracts a provision requiring each Subcontractor to include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier Subcontractor. Each Subcontractor shall include with its invoice to, or request for payment from, PPEA Contractor, a certification that that Subcontractor has paid each of its Suppliers and lower tier Subcontractors their proportionate share of previous payments received from PPEA Contractor attributable to the Work performed or the materials furnished by it under this Contract.

PPEA Contractor's obligation to pay interest to the Subcontractor or Supplier pursuant to subsection (b) of this Section is not an obligation of Owner. A modification to this Contract shall not be made for the purpose of providing reimbursement for such interest charge. PPEA Contractor's cost reimbursement claim shall not include any amount for reimbursement of such interest charge.

34. CHANGES IN THE WORK

- (a) Owner may at any time, by written order utilizing the Change Order and without notice to the sureties, make changes in the Work which are within the general scope of the Contract, except that no change will be made which will increase the total Contract Price to an amount more than twenty percent (20%) in excess of the original Contract Price without notice to sureties. At the time of the Preconstruction Meeting described in Section 44(b) PPEA Contractor and Owner shall advise each other in writing of their designees authorized to accept and/or approve changes to the Contract Price and of any limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, PPEA Contractor or Owner shall give written notice to the other within seven (7) calendar days, utilizing the procedures set forth in these General Conditions. PPEA Contractor agrees and understands that the authority of Owner's designee is limited by Virginia Code §2.2-4309 and any other applicable statute.

In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by Owner:

- (1) By a mutually agreed fixed amount change to the Contract Price and/or time allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include PPEA Contractor's overhead and profit. See Subsections (d) and (e) below.
- (2) By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
- (3) By ordering PPEA Contractor, by Change Order citing this subsection, to proceed with the change to the Work; to keep in a form acceptable to Owner, an accurate, itemized account of the cost of the change in the Work, including, but not limited to, the costs of labor, materials, equipment, and supplies; and to annotate a copy of the Project schedule to accurately show the status of the Work at the time this initial change order is issued, to show the start and finish of the changed Work, and the status of the Work when the changed Work is completed. A Change Order citing this subsection shall describe the parameters of the change in the Work, describe the cost items to be itemized and verified for payment, address the impact on the schedule for Substantial Completion, and state that a subsequent Change Order will be issued to incorporate the cost of the changed Work into the Contract Price and any change in the Contract Time for Completion or Contract Completion Date. PPEA Contractor shall sign the Change Order acknowledging he has been directed to proceed with the changed Work. PPEA Contractor's signature on each initial Change Order authorizing Work and citing this Subsection as the method for determining the cost of the Work shall not constitute PPEA Contractor's agreement on the cost or time impact of the changed Work.

Except as otherwise may be agreed to in writing by Owner, such costs shall not exceed those prevailing for the trades or crafts, materials, and equipment in the locality of the Project, may include only those items listed as allowable in Subsection 34(e), and shall not include any of the costs listed as not allowable in Subsection 34(f). Owner shall be permitted, on a daily basis, to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

Within fourteen (14) days of the conclusion of such ordered Work, PPEA Contractor and

Owner shall arrive at a cost for the Change Order, based on the records kept and PPEA Contractor's allowance for overhead and profit as set forth in Subsections (d), (e) and (f) below, and such costs shall be incorporated into a Change Order which references the Change Order ordering the Work. If agreement on the cost of the changed Work cannot be reached within the fourteen (14) days allotted, PPEA Contractor may file a claim for the disputed amount as provided for in Section 43.

- (b) PPEA Contractor shall review any Owner requested or directed change and shall respond in writing within fourteen (14) calendar days after receipt of the proposed change (or such other reasonable time as Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract time and Price. PPEA Contractor shall furnish to Owner an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price. Owner shall review PPEA Contractor's proposal and respond to PPEA Contractor within thirty (30) days of receipt. If a change to the Contract Price and time for performance are agreed upon, both parties shall sign the Change Order. If the price and time are not agreed upon, Owner may direct PPEA Contractor to proceed under Subsection 34(a)(3). Changes to the Contract time and/or Price shall be effective when signed by both parties.
- (c) In figuring changes, any instructions for measurement of quantities set forth in the Contract shall be followed.
- (d) The percentage for overhead and profit to be used in calculating both additive and deductive changes in the Work (other than changes covered by unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work (i.e. difference in cost between original and revised Work):
 - (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). PPEA Contractor's mark-up on the Subcontractor's price shall be a maximum of ten percent (10%).
 - (2) If PPEA Contractor does all or part of the changed Work, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
 - (3) If a Sub-Subcontractor at any tier does all or part of the changed Work, the sub-Subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup of a sub-Subcontractor's Work by PPEA Contractor and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%).
 - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event that material Submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract Price attributable to that Work, shall be deducted from the Contract Price. The credit to

Owner for reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).
- (e) Allowable costs for changes in the Work may include the following:
 - (1) Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by Owner.

- (2) Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable. If applicable, all cash discounts shall accrue to PPEA Contractor, unless Owner deposits funds with PPEA Contractor to make such payments, and all trade discounts, rebates, refunds, and returns from the sale of surplus materials shall accrue to Owner.
 - (3) Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change in the Work, the cost shall be the rental rate according to the terms of the rental agreement, which Owner shall have the right to approve. If owned by PPEA Contractor, the costs shall be a reasonable price based upon the life expectancy of the equipment and the purchase price of the equipment. If applicable, transportation costs may be included.
 - (4) Costs of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At Owner's request, PPEA Contractor shall provide proof of his notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up.
 - (5) Contractor and Subcontractor overhead costs as set forth in Subsection (d) markups above.
 - (6) If the change in the Work also changes the Time for Completion or Contract Completion Date by adding days to perform the Work, an itemized accounting of the following Site direct overhead expenses for the change to the time may be considered as allowable costs for compensation in addition to those shown above: The Site superintendent's pro-rata salary, temporary Site office trailer expense, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities. All other direct and indirect overhead expenses are considered covered by and included in the Subsection (d) markups above.
 - (7) Any other costs directly attributable to the change in the Work with the exception of those set forth below.
- (f) Allowable costs for changes in the Work shall not include the following:
- (1) Costs due to the negligence of PPEA Contractor, any Subcontractor, Supplier, their employees or other persons for whom PPEA Contractor is responsible, including, but not limited to, costs for the correction of Defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment.
 - (2) Home office expenses including payroll costs for PPEA Contractor's officers, executives, administrators, project managers, accountants, counsel, engineers, timekeepers, estimators, clerks, and other similar administrative personnel employed by PPEA Contractor, whether at the Site or in PPEA Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups allowable in Subsection (d) above.
 - (3) Home and field office expenses not itemized in Subsection 34 (e)(6) above. Such items include, but are not limited to, expenses of PPEA Contractor's home and branch offices, PPEA Contractor's capital expenses, interest on PPEA Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent, utilities, telephone and office equipment, and other general overhead expenses.

- (g) All Change Orders, except the "initial" Change Orders authorizing work citing Subsection 34(a)(3) procedures, must state that the Contract Time for Completion or Contract Completion Date is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if changed, the new Time for Completion must be stated.
- (1) If PPEA Contractor requests an extension to the Time for Completion or a later Contract Completion Date, he must provide written justification for the extension to Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. If approved, the increase in time required to complete the Work shall be added to the Time for Completion or Contract Completion Date.
 - (2) Owner may decrease, by Change Order, the Time for Completion or Contract Completion Date when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the Bar Graph Schedule. PPEA Contractor may submit a request to decrease, by Change Order, the Time for Completion or Contract Completion Date under the procedures and subject to the considerations set forth in Section 17(e). No request for such decrease shall be considered for approval unless the proposed shorter schedule is otherwise acceptable under Section 17. The Change Order decreasing the Time for Completion or changing the Contract Completion Date must be signed by both Owner and PPEA Contractor.
 - (3) With the exception of Change Orders under Subsection 34(a)(3), which shall arrive at a change to the Contract Price and any change to time using the procedures set forth therein, each Change Order shall include all time and monetary impacts of the change, whether the Change Order is considered alone or with all other changes during the course of the Project. Failure to include a change to time and Contract Price in Section 35(a) (1) or (2) Change Orders shall waive any change to the time and Contract Price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the Change Order. Such a determination may be postponed not more than forty-five (45) days to give PPEA Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work. During any such postponement, the Work shall proceed, unless Owner agrees otherwise.
 - (4) If at any time there is a delay in the critical path of the Work due to postponement, due to PPEA Contractor's efforts to justify an extension of the time or an increase in the Contract Price, or due to PPEA Contractor's refusal to proceed with any of the Work, pending agreement on a change in time or price, such delay and any PPEA Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Contract Completion Date or for an increase in the Contract Price.
- (h) The acceptance by PPEA Contractor of any payment made by Owner under a Change Order shall be and operate as a release to Owner of all claims by PPEA Contractor and of all liability owing to PPEA Contractor for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve PPEA Contractor of responsibility for faulty materials or workmanship or operate to release PPEA Contractor or his surety from any obligation arising under the Contract or the Standard Performance Bond or Standard Labor and Material Payment Bond.
- (i) Payments will not be made for any Work, labor or materials performed on a unit price or a Subsection 34(a)(3) basis until PPEA Contractor has furnished Owner documents, certified as true and correct by an authorized officer or agent of PPEA Contractor, evidencing the cost of such Work, labor and materials. Owner may require any or all of the following documentation to be provided by PPEA Contractor.

For Work performed on a Unit Price basis:

- (1) certified measurements of authorized and approved excavations, over-excavations, fills and/or backfills, and similar work; and/or
- (2) certified measurements of piling installed, caissons installed, and similar work; and/or
- (3) daily records of waste materials removed from the Site and/or fill materials imported to the Site.

For Work performed on a Subsection 34(a)(3) basis:

- (1) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
- (2) equipment type & model, dates, daily hours, total hours, rental rate or other specified rate, and extension for each unit of equipment;
- (3) invoices for materials showing quantities, prices, and extensions;
- (4) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
- (5) certified measurements of over-excavations, piling installed and similar work; and/or
- (6) transportation records for materials, including prices, loads, and extensions.

Requests for payment shall be accompanied and supported by invoices for all materials used and for all transportation charges claimed. If materials come from PPEA Contractor's own stock, then an affidavit may be furnished, in lieu of invoices, certifying quantities, prices, etc. to support the actual cost.

35. EXTRAS

If PPEA Contractor claims that any instructions given to him by Owner, by drawings or otherwise, involve extra Work which increases the scope of the Contract, then, except in emergencies endangering life or property, he shall give Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than fourteen (14) days after the receipt of such instructions. Should it not be immediately clear to PPEA Contractor that the change involves extra Work outside the scope of the Contract, written notice shall be sufficient if given as soon as possible after such realization, but in no event later than fourteen (14) days after the start of such Work. If Owner agrees, a Change Order shall be issued, and any additional compensation shall be determined by one of the three (3) methods provided in said Section 34, as selected by Owner. Except as otherwise specifically provided, no claims for extra Work shall be allowed unless timely notice, as required by this Section, is given by PPEA Contractor and unless such Work is performed pursuant to written Change Order as provided in Section 34. The Change Order shall designate which of the three methods for computing charges and credits set forth in said Section 34(a) shall be used.

36. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of PPEA Contractor or anyone employed by him, or if Owner should fail to pay to PPEA Contractor within thirty (30) days any sum certified by the Architect/Engineer when no dispute exists as to the sum due or any provision of the Contract, then PPEA Contractor may, upon ten

(10) calendar days written notice to Owner, stop Work or terminate the Contract and recover from Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit on the Work performed shall be recovered only to the extent that PPEA Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. PPEA Contractor may not receive profit or any other type of compensation for parts of the Work not performed. PPEA Contractor may recover the reasonable cost of physically closing down the Site, but no other costs of termination. Owner may offset any claims it may have against PPEA Contractor against the amounts due to PPEA Contractor. In no event shall termination of the Contract by PPEA Contractor terminate the obligations of PPEA Contractor's surety on its payment and performance bonds.

37. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE

- (a) If PPEA Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, Owner may terminate the Contract. If PPEA Contractor should unreasonably refuse or repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment, or if he should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if he should disregard laws, ordinances or the written instructions of the Architect/Engineer or Owner, or otherwise be in substantial violation of any provision of the Contract, then Owner may terminate the Contract.
- (b) Prior to termination of the Contract, Owner shall give PPEA Contractor and his surety ten (10) calendar days written notice pursuant to Section 1 ("Notice") of these General Conditions, during which PPEA Contractor and/or his surety may rectify the basis for the notice. If rectified to the satisfaction of Owner within said ten (10) days, Owner may rescind its notice of termination. If not, the termination for cause shall become effective at the end of the ten (10) day notice period. In the alternative, Owner may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from PPEA Contractor and/or its surety that the basis for the termination will be remedied in a time and manner which Owner finds acceptable. If at any time after such postponement, Owner determines that PPEA Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then Owner may immediately terminate the Contract for cause, without the necessity of further ten (10) day notice, by notifying PPEA Contractor and his surety in writing of the termination. In no event shall termination for cause terminate the obligations of PPEA Contractor's surety on its payment and performance bonds.
- (c) Upon termination of the Contract, Owner shall take possession of the Site and of all materials, tools and equipment thereon. If no security has been provided pursuant to Section 8 herein, Owner shall finish the Work by whatever method he may deem expedient. In such case PPEA Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price, PPEA Contractor shall pay the difference to Owner, together with any other expenses of terminating the Contract and having it completed by others. If security has been provided pursuant to Section 8 herein, Owner shall provide Notice to the Surety as set forth in Subsection (b) herein and proceed as set forth in the Standard Performance Bond, and the Terms and Conditions therein.
- (d) If it should be judicially determined that Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of Owner.
- (e) Termination of the Contract under this Section is without prejudice to any other right or remedy of Owner.

38. TERMINATION BY OWNER FOR CONVENIENCE

- (a) Owner may terminate this Contract, in whole or in part, at any time without cause upon giving PPEA Contractor written notice of such termination pursuant to Section 1 ("Notice") of these General Conditions. Upon such termination, PPEA Contractor shall immediately cease Work and remove from the Site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, PPEA Contractor shall take such steps as Owner may require to assign to Owner PPEA Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, PPEA Contractor shall receive as full compensation for termination and assignment the following:
- (1) All amounts then otherwise due under the terms of this Contract,
 - (2) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Schedule of Values and Certificate for Payment through the date of termination,
 - (3) Reasonable compensation for the actual cost of demobilization incurred by PPEA Contractor as a direct result of such termination. PPEA Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to PPEA Contractor of any nature.
- (j) In no event shall termination for the convenience of Owner terminate the obligations of PPEA Contractor's surety on its payment and performance bonds.

39. DAMAGES FOR DELAYS; EXTENSION OF TIME

- (a) If PPEA Contractor is delayed at any time in the progress of the Work by any act or omission of Owner, its agents or employees or any separate independent PPEA Contractor of Owner, and the act or omission is the result of or is necessitated by causes outside Owner's control; or if PPEA Contractor is delayed by strikes, fires, unusual delays in transportation or unavoidable casualties, or other causes outside Owner's or PPEA Contractor's control, PPEA Contractor shall give Owner written notice within ten (10) days of the inception of the delay. Owner shall extend the time for Substantial Completion or Final Completion, as the case may be, for the length of time that the Substantial Completion or Final Completion of the Work was actually delayed thereby, and PPEA Contractor shall not be charged with liquidated or actual damages for delay during the period of such extension nor shall PPEA Contractor be due compensation or damages of any kind, under any theory of law, as a result of such delay, the impact of such delay, or acceleration of Work as a result of such delay.
- (b) If PPEA Contractor is delayed at any time in the progress of the Work by any act or omission of Owner, its agents or employees, due to causes within their control, when such delay results from causes within Owner's control, and PPEA Contractor intends to seek additional compensation for damages, if any, caused by the delay, PPEA Contractor shall inform Owner promptly at the time of the occurrence giving rise to the delay by the fastest means available and shall give written notice no later than two (2) working days after inception of the delay.

PPEA Contractor's notice to Owner shall specify the nature of the delay claimed by PPEA Contractor, the cause of the delay and the impact of the delay on PPEA Contractor's Work schedule. Owner shall then have three (3) working days to respond to PPEA Contractor's notice with a resolution, remedy or direction to alleviate the delay or with a notice rejecting the claim for delay alleged to be caused by Owner or parties for whom Owner is responsible. If the issue is not then resolved, PPEA Contractor may submit a request for Change Order in

accordance with Sections 34 and 35 or submit a claim as provided for in Section 43. PPEA Contractor shall be entitled to additional compensation only if the delay was caused solely by acts or omissions of Owner, its agents or employees, due to causes solely within their control.

- (c) PPEA Contractor shall not be entitled to an extension of the Time for Completion or Contract Completion Date or to any additional compensation for delays caused by acts or omissions of PPEA Contractor due to causes within his control, including, but not limited to, delays resulting from Defective Work including workmanship and/or materials, from rejected work which must be corrected before dependent work can proceed, from Defective Work or rejected work for which corrective action must be determined before like work can proceed, or from incomplete, incorrect or unacceptable Submittals or samples.
- (d) No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the schedule shown on the approved bar graph schedule, and any float has been consumed. No extension of time or additional compensation shall be given for a delay if PPEA Contractor failed to give notice in the manner and within the time prescribed in Subsections (a) or (b) above, whichever applies. Furthermore, no extension of time or additional compensation shall be given for any delay unless a claim therefor is made in writing to Owner within twenty (20) days of the end of the delay. The claim shall state the cause of the delay, the number of days of extension requested and any compensation requested by PPEA Contractor. PPEA Contractor shall report the termination of the delay to Owner not less than ten (10) days after such termination. Failure to give notice of either the inception or the termination of the cause of delay or failure to present a claim for extension of time and/or monetary compensation within the times prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.
- (e) Requests for compensation for delays pursuant to Subsection (b) above must be substantiated by itemized data and records clearly showing that the Work delayed was on the sequence of Work on the approved bar graph schedule, as modified, and that the additional costs incurred by PPEA Contractor are directly attributable to the delay in the Work claimed. Furthermore, compensation for delay shall be calculated from the contractual Time for Completion or Contract Completion Date, as adjusted by Change Order, and shall not be calculated based on any early completion planned or scheduled by PPEA Contractor, unless a Change Order has been executed pursuant to Section 17(e) changing the Time for Completion or the Contract Completion Date to reflect such early completion. See Section 34 for procedures for PPEA Contractor to follow if he plans early completion of the Work and wishes to request a Change Order reflecting the early completion date.

If there is an extension in the Time for Completion or the Contract Completion Date and if PPEA Contractor is entitled to compensation under Subsection 39(b), and where there is no change in the Work, an itemized accounting of the following direct Site overhead expenses will be considered as allowable costs to be used in determining the compensation due PPEA Contractor: Site superintendent pro-rata salary, temporary Site office expense, temporary Site facilities, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A fifteen percent (15%) markup of these expenses will be allowed to compensate PPEA Contractor for home office and other direct or indirect overhead expenses.
- (f) If PPEA Contractor submits a claim for delay damages pursuant to Subsection 39(b) above, PPEA Contractor shall be liable to Owner for a percentage of all costs incurred by Owner in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of PPEA Contractor's total delay claim which is determined through litigation to be false or to have no basis in law or in fact. (§ 2.2-4335., Code of Virginia)
- (g) Any change in the Contract Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.

- (h) If PPEA Contractor fails to complete the Work within the Time for Completion or the Contract Completion Date, PPEA Contractor shall be liable to Owner in the amounts set forth in the Supplemental General Conditions, if any, not as a penalty, but as fixed, agreed and liquidated damages for delay until the Work is substantially or finally completed as the case may be. If liquidated damages are not so fixed in the Supplemental General Conditions, PPEA Contractor shall be liable for any and all actual damages sustained as a result of delay. In addition to damages for delay, whether liquidated or actual, PPEA Contractor shall also be liable for any and all actual damages sustained by Owner as a result of any other breach of the Contract, including, but not limited to, Defective Work and abandonment of the Contract. If liquidated damages are provided by the Supplemental General Conditions, the following provisions apply:
- (1) If the Work is not substantially complete by the Time for Substantial Completion as determined in accordance with Paragraph 3 of the Comprehensive Agreement Between Owner and PPEA Contractor, PPEA Contractor shall owe to Owner, not as a penalty but as Step One liquidated damages, the sum stated in said Paragraph 3 for Step One liquidated damages for each and every partial or total calendar day of delay in Substantial Completion.
 - (2) Once the Work is substantially complete, the accrual of Step One liquidated damages shall cease and PPEA Contractor shall have thirty (30) calendar days in which to achieve Final Completion of the Work.
 - (3) If Final Completion of the Work is not achieved on or before the thirtieth (30th) calendar day after Substantial Completion, and if Owner has not granted any extension of time, PPEA Contractor shall owe to Owner, not as a penalty but as Step Two liquidated damages, the sum stated in said Paragraph 3 as Step Two liquidated damages for each and every partial or total calendar day of delay in Final Completion.

40. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION

- (a) PPEA Contractor shall notify Owner, in writing on the Certificate of Substantial Completion by PPEA Contractor, of the date when the Work or designated portion thereof, will be, in his opinion, substantially complete and ready for inspection and testing to determine if it has reached Substantial Completion. The notice shall be given at least ten (10) days in advance of said date. Inspection and testing shall take place at a time(s) mutually agreeable to PPEA Contractor and Owner.
- (b) The inspection shall include a demonstration by PPEA Contractor that all equipment, systems, and operable components of the project function properly and in accordance with the Contract Documents. PPEA Contractor shall furnish access for the inspection and testing. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in a written list of unfinished Work and Defective Work, commonly referred to as a "punch list", which must be finished and corrected to obtain Final Completion.
- (c) Owner shall notify PPEA Contractor, in writing, of the date Owner accepts the Work, or the specified portion thereof, as substantially complete or Owner shall notify PPEA Contractor of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.
- (d) PPEA Contractor shall notify Owner, in writing on the Certificate of Completion by PPEA Contractor of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least five (5) days in advance of said date. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Work is finally and totally complete, including the elimination of all defects, the Work shall be finally accepted by Owner and final payment shall be made in accordance with Section 32 of these General Conditions.

- (e) Owner's Representative and such other persons as may be designated by Owner shall participate in the inspections on behalf of Owner. If one or more Substantial or Final Completion reinspections are required, PPEA Contractor shall reimburse Owner for all costs of reinspection or, at Owner's option, the costs may be deducted from payments due to PPEA Contractor.
- (f) Approval of Work at or as a result of any inspection required herein shall not release PPEA Contractor or his surety from responsibility for complying with the Contract.

41. WARRANTY OF WORK

- (a) Except as otherwise specified, all Work shall be, and is hereby, warranted by PPEA Contractor against defects resulting from the use of materials, equipment or workmanship, which are defective, inferior, or not in accordance with the terms of the Contract, for one (1) year from the date of Final Completion of the entire Project.
- (b) If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by Owner which requires or renders necessary repairs or changes in connection with the guaranteed Work, PPEA Contractor shall, promptly upon receipt of written notice, stating with reasonable specificity the nature of the Defective Work, from Owner, such notice being given not later than two weeks after the guarantee period expires, and without expense to Owner:
 - (1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects, inferior materials, equipment or workmanship therein;
 - (2) Make good all damage to the structure or Site or equipment or contents thereof which in the opinion of Owner, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and
 - (3) Make good any Work or materials or the equipment and contents of structures and/or Site disturbance that results from fulfilling the provisions of this Section.
- (c) In any case, when in fulfilling the requirements of the Contract and this warranty or any other warranty, PPEA Contractor disturbs any work performed by a separate contractor, he shall restore such work to a condition satisfactory to Owner and guarantee such restored work to the same extent as if it was guaranteed under this Contract.
- (d) If PPEA Contractor, after notice, fails to proceed promptly to comply with the terms of the warranty as set forth in this Section, Owner may have the defects or inferior materials, equipment or workmanship corrected and PPEA Contractor and his surety shall be liable for all expense incurred.
- (e) All special warranties applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Section.
- (f) The warranty of this Section shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from this Contract or by law.
- (g) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which PPEA Contractor might have under the Contract Documents, including liability for Defective Work under Sections 26 and 27. This Section relates only to the specific obligation of PPEA Contractor as set forth in this Section to correct the Work and does not limit the time within which his obligation to comply with the Contract Documents may be

sought to be enforced, nor the time within which proceedings may be commenced to establish PPEA Contractor's liability with respect to his other obligations under the Contract Documents.

- (h) In the event the Work of PPEA Contractor is to be modified by another contractor, either before or after the Final Inspection provided by Section 40(d) of the General Conditions, PPEA Contractor shall remain responsible in all respects under this Section's Guarantee of Work and under any other warranties or guarantees applicable to or arising from this Contract. However, PPEA Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying his Work. PPEA Contractor and the contractor making the modifications shall each be solely responsible for his respective work. PPEA Contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work by his modification. If PPEA Contractor claims that a subsequent contractor has introduced defects of materials and/or workmanship into his Work, it shall be the burden of PPEA Contractor making the claim to demonstrate clearly the nature and extent of such introduced defects and the other contractor's responsibility for those defects. Any contractor modifying the work of another shall have the same burden if he asserts that defects in his work were caused by the contractor whose work he is modifying.

42. ASSIGNMENTS

Neither party to the Contract shall assign the Contract in whole or any part without the written consent of the other, nor shall PPEA Contractor assign any moneys due or to become due to him hereunder, without the prior written consent of Owner. Consent to assignment shall not be unreasonably withheld. No assignment shall relieve any party from its obligations under the Contract.

43. CONTRACTUAL DISPUTES (§2.2-4363, Code of Virginia)

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after final payment; however, written notice of PPEA Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the Work upon which the claim is based. The filing of a timely notice is a prerequisite to recovery under this Section. Although PPEA Contractor may be required to submit certain classes of claims prior to final payment, and PPEA Contractor is not prevented from filing claims during the pendency of the Work, Owner shall not be obligated to render a final written decision on any claim until after final payment. All claims shall be submitted along with all practically available supporting evidence and documentation.

No written decision denying a claim or addressing issues related to the claim, if rendered prior to final payment, shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the City Manager or his designee. PPEA Contractor may not institute legal action prior to receipt of Owner's final written decision on the claim unless Owner fails to render such a decision within one hundred twenty (120) days of submission of the claim or within ninety (90) days of final payment, whichever is later.

The decision of the City Manager shall be final and conclusive unless PPEA Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in §2.2-4364 of the Code of Virginia. Failure of Owner to render a decision within 120 days shall not result in PPEA Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of Owner's failure to render a decision within 120 days shall be PPEA Contractor's right to immediately institute legal action. No administrative procedure pursuant to §2.2-4365 of the Code of Virginia has been established for contractual claims under this Contract.

44. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

- (a) As a part of the Work, PPEA Contractor in conjunction with his Subcontractors and Suppliers shall provide Owner's operations and maintenance personnel with adequate instruction and

training in the proper operation and maintenance of any equipment, systems, and related controls provided or altered in the Work. The training requirements may be further defined in the specifications.

- (b) PPEA Contractor shall provide Owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment and systems provided in the Work. Further specific requirements may be indicated in the specifications.

45. PROJECT MEETINGS

- (a) The intention of this Section is that PPEA Contractor and Owner have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. PPEA Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. Owner is responsible for making a reasonable effort to provide timely responses to PPEA Contractor.

- (b) Preconstruction Meeting:

Prior to the start of construction and no later than 15 calendar days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include Owner's Representative and Project Inspector, PPEA Contractor's Owner's Representative and superintendent (and scheduler, if PPEA Contractor desires), and representatives of PPEA Contractor's major Subcontractors. The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:

- (1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority. Name of PPEA Contractor's on-site certified Responsible Land Disturber.
- (2) Names, addresses, telephone numbers and FAX numbers to be used for Requests for Information (RFI), Requests for Clarification (RFC), Requests for Proposals (RFP), shop drawings, Submittals, and notices.
- (3) Contractor's proposed construction schedule and Owner's sequencing requirements, if any.
- (4) Schedule of Values and Certificate for Payment requirements and procedures.
- (5) Procedures for shop drawings, product data and Submittals.
- (6) Procedures for handling Field Orders and Change Order.
- (7) Procedures for PPEA Contractor's request for time extension, if any.
- (8) Construction Site requirements, procedures and clarifications to include:
 - Manner of conducting the Work
 - Site specialties such as dust and erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic
 - Safety
 - Layout of the Work
 - Quality control, testing, inspections and notices required
 - Site visits by the A/E and others
 - Owner's Project Inspector duties
 - Running Punch List

- As-Built Drawings

- (9) Procedures and documentation of differing or unforeseen Site conditions
- (10) Monthly Pay Meeting
- (11) Project Close-Out requirements and procedures
- (12) Project records

(c) Monthly Pay Meetings:

Section 32 establishes the requirement for a monthly pay meeting which will usually be held at or near the Site. In addition to Owner's and PPEA Contractor's representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

- Owner's Project Inspector
- Contractor's project superintendent
- A/E representative
- A representative of each Subcontractor who performed work included in the current pay request.
- A representative of each Subcontractor who is projected to perform work in the coming month.

The following topics should be included, as a minimum, in the monthly pay meeting:

- (1) Observations of status, quality and workmanship of Work in progress
- (2) Validation of the Schedule of Values and Certificate for payment
- (3) Conformance with proposed construction schedule
- (4) Outstanding Requests for Information, Requests for Clarification and Requests for Proposal
- (5) Submittals with action pending
- (6) Status of pending Change Orders
- (7) Status of Running Punch List items
- (8) Work proposed for coming pay period
- (9) Discussions of any problems or potential problems which need attention

(d) **Other Meetings:**

Requirements for other meetings, such as progress meetings, coordination meetings, pre-installation meetings and/or partnering meetings, may be included in the Contract Documents.

46. GENERAL INDEMNITY

- (a) PPEA Contractor shall indemnify and hold Owner harmless, to the fullest extent permitted by law, from any and all third party claims, demands, suits, penalties, proceedings, administrative or judicial orders, causes of action, losses, liabilities, damages or expenses, including reasonable attorney's fees and disbursements, arising out of (i) bodily injury, sickness or death and property

damage or destruction (other than to the Project itself) in connection with the performance of PPEA Contractor's duties under this Comprehensive Agreement, but only to the extent of PPEA Contractor's negligence, or intentional act; (ii) any claim of patent infringement or copyright infringement committed by PPEA Contractor or any of its Design Professionals; or (iii) any failure by PPEA Contractor in its performance of the Project to comply with any Codes and Standards; provided, however, that such obligation by PPEA Contractor to indemnify and hold Owner harmless shall not apply to any loss, liability, damage or expense, including attorneys' fees, to the extent caused by Owner or its employees, agents, consultants or PPEA Contractors.

- (b) PPEA Contractor's obligation to indemnify, defend and hold any indemnities harmless shall apply only to claims of third parties, to the extent caused by PPEA Contractor's negligence, and shall be limited to the proceeds of insurance required under this Comprehensive Agreement. The foregoing shall apply regardless of whether liability or remedies arise in contract, negligence, strict liability or otherwise.

47. LIABILITY LIMITATION

- (a) PPE Contractor shall be liable to Owner in connection with the Work and this Contract only for causes of action which arise prior to Final Completion of the Work or, with respect to warranty claims, prior to the expiration of the warranty period, provided that Owner shall give PPE Contractor notice of the claim within one hundred twenty (120) days after actual discovery thereof, and provided in all cases that notice of the claim is given within twenty four (24) month following the end of the month of Final Completion of the Work.
- (b) In any separate contracts Owner may enter into with consultants, contractors, or suppliers other than Contractor in connection with the Project, Owner shall use its Reasonable Efforts to provide that indemnities and releases running to the benefit of Owner in or under such contracts shall also run to the benefit of Contractor Group. Contractor shall use Reasonable Efforts to provide that indemnities running to the benefit of Contractor from its Subcontractors shall also run to the benefit of Owner.
- (c) Owner represents it is the sole party with an interest in the Work, or that it is authorized to bind and does bind all parties with an interest in the Work, to the releases and limitations of liability set forth in this Contract. Owner further agrees that any future recipient of any interest in the Work, will be bound by such releases and limitations of liability such that the total aggregate liability of PPE Contractor to Owner and such recipients shall not exceed the limits of liability set forth in this Contract.
- (d) Except to the extent prohibited by law, the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability and indemnities expressed throughout this Contract shall apply even in the event of the fault, negligence (in whole or in part), strict liability, breach of contract or otherwise of the party released or whose liability is waived, disclaimed, limited, fixed or indemnified and shall extend in favor of members of PPE Contractor and its Subcontractors and the Owner as appropriate.
- (e) Neither Owner nor PPEA Contractor, nor its subcontractors nor their respective officers, directors, employees, agents or representatives, shall be liable for consequential, incidental, indirect, special or punitive damages resulting from Services performed under this Interim Agreement. In no instance, however, shall this provision preclude the assessment of liquidated provided for in the Supplemental General Conditions, nor shall such limitation in any respect negate Owner's right to recovery of actual damages.

*** ENDOFGENERALCONDITIONS ***